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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[WC Docket No. 10-90, CC Docket No. 01-92; DA 15-249]

Connect America Fund; Developing a Unified Intercarrier Compensation Regime.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission's Wireline Competition Bureau clarifies certain rules related to the implementation of the intercarrier compensation transition for rate-of-return local exchange carriers adopted in the USF/ICC Transformation Order. Specifically, the Bureau clarifies the Commission's rules governing Eligible Recovery calculations to address limited unanticipated results of the application of the true-up process evidenced by the rate-of-return carriers' 2014 annual access tariff filings.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Pamela Arluk, Wireline Competition Bureau, Pricing Policy Division, (202) 418-1520 or (202) 418-0484 (TTY); or Robin Cohn, Wireline Competition Bureau, Pricing Policy Division, (202) 418-1520 or (202) 418-0484 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in WC Docket No. 10-90 and CC Docket No. 01-92, adopted and released on February 24, 2015. The full text of this document can be viewed at the following Internet address:

https://apps.fcc.gov/edocs_public/attachmatch/DA-15-249A1.docx. The full text of this document is also available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW, Room CY-A257, Washington, D.C. 20554. To request materials in accessible formats for

people with disabilities (e.g. braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (e.g. accessible format documents, sign language interpreters, CART, etc.), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY).

I. INTRODUCTION

1. In the USF/ICC Transformation Order, the Commission delegated to the Wireline Competition Bureau (Bureau) the authority to make any rule revisions necessary to ensure that the intercarrier compensation (ICC) reforms adopted by the Commission are properly reflected in the Commission's rules, including correction of any conflicts between the new or revised rules and addressing any omissions or oversights. In the Order, the Bureau acts pursuant to its delegated authority to clarify certain rules relating to implementation of the ICC transition for rate-of-return local exchange carriers (LECs) adopted in the USF/ICC Transformation Order. We clarify the Commission's rules governing Eligible Recovery calculations under § 51.917(d) to address a limited number of unanticipated results associated with application of the true-up process that became apparent in rate-of-return carriers' 2014 annual access tariff filings. Specifically, we clarify that a rate-of-return carrier that received too much Eligible Recovery in 2012-13 because of an under-projection of demand for that tariff period, and does not have sufficient Eligible Recovery in 2014-15 to fully offset the 2012-13 amount of over-recovery, must refund the amount that is not offset to the Universal Service Administrative Company (USAC) to avoid duplicative recovery. Additionally, to ensure a carrier receives the Eligible Recovery it was entitled to in 2012-13, we clarify that a rate-of-return carrier that received too little Eligible Recovery in 2012-13 because of an over-projection of demand for that tariff period may seek recovery for any amounts it was not able to recover through its 2014-15 Eligible Recovery from USAC. We also revise § 51.917 of the Commission's rules to address similar discrepancies that may occur in future years as a result of the true-up process.

II. BACKGROUND

2. In the USF/ICC Transformation Order, the Commission adopted, among other things, rules to implement the ICC reform timeline that require carriers to adjust, over a period of years, many of their legacy ICC rates effective on July 1 of each of those years, with the ultimate goal of transitioning to a bill-and-keep regime. The Commission also adopted a recovery mechanism to mitigate the impact of reduced ICC revenues on carriers and to facilitate continued investment in broadband infrastructure while providing greater certainty and predictability going forward. The recovery mechanism allows incumbent LECs to recover ICC revenues reduced due to the ICC reforms, up to an amount defined for each year of the transition, which is referred to as “Eligible Recovery.” A Rate-of-Return carrier initially may recover its Eligible Recovery each year from its end users through the Access Recovery Charge (ARC) subject to an annual cap. If the projected ARC revenues do not recover the entire Eligible Recovery amount, the carrier may elect to collect the remainder from Connect America Fund ICC support.

3. For rate-of-return LECs, the calculation each year of a carrier’s Eligible Recovery begins with its Base Period Revenue (BPR). A rate-of-return carrier’s BPR is the sum of certain ICC intrastate switched access revenues and net reciprocal compensation revenues received by March 31, 2012, for services provided during FY 2011, and the projected revenue requirement for interstate switched access services provided during the 2011-2012 tariff period. The BPR for rate-of-return carriers was reduced by 5% initially and is reduced by an additional 5% in each year of the transition. A rate-of-return LEC’s Eligible Recovery is equal to the adjusted BPR for the year in question less, for each relevant year of the transition, the sum of (1) projected intrastate switched access revenue; (2) projected interstate switched access revenue; and (3) projected net reciprocal compensation revenue.

4. Beginning in 2014, the recovery mechanism also incorporates in the Eligible Recovery calculation a true-up of the revenue difference between projected and actual demand for interstate and intrastate switched access services, reciprocal compensation, and the ARC for the tariff period that began two years earlier. This adjustment measures the extent to which a carrier received more or less than the revenues it projected for the earlier period and thus whether it received too little, or too much, Eligible

Recovery through ARCs and/or Connect America Fund ICC support for that period. The true-up is achieved by adjusting the later tariff period's Eligible Recovery to account for the carrier's revenue variance resulting from differences between projected and actual demand for the prior period. The true-up process ensures that rate-of-return carriers at a minimum have the opportunity to receive their adjusted BPR, notwithstanding changes in demand for their intercarrier compensation rates being capped or reduced. The true-up process does not require that a carrier that has negative Eligible Recovery, meaning the carrier received revenues in excess of its adjusted BPR from its interstate and intrastate switched access and reciprocal compensation alone and *not* through an ARC or Connect America Fund ICC support, to refund any of the revenues it received.

5. To provide context for how the true-up process works, the following two examples demonstrate scenarios in which the carrier either under-projected or over-projected its revenues, and thus must engage in a true-up calculation pursuant to § 51.917(d)(1)(iii)-(iv) of the Commission's rules. In this first example, Carrier A under-projected its actual revenues and received too much Eligible Recovery for the 2012-2013 tariff period. Carrier A had a BPR of \$100.00, a projected revenue amount of \$80.00 and an actual revenue amount of \$85.00:

2012-2013 BPR is $\$100.00 \times .95 = \95.00 (Adjusted BPR)

2012-2013 Total Projected Revenues = \$80.00

2012-2013 Eligible Recovery (Adjusted BPR-Projected Revenues) = \$15.00

2012-2013 Total Actual Revenues = \$85.00

Projected Revenue – Actual Revenue = \$-5.00 (true-up amount)

2014-2015 Eligible Recovery adjusted by \$-5.00

As a result of its under-projection, Carrier A would need to reduce its 2014-2015 tariff period Eligible Recovery by five dollars to reflect the difference between its actual revenues and projected revenues for the 2012-2013 tariff period.

6. Conversely, in the second example, Carrier B over-projected its revenue amounts in the 2012-2013 tariff period, and it would need to increase its 2014-2015 Eligible Recovery amounts to reflect the difference. Carrier B had a BPR of \$100.00, a projected revenue amount of \$85.00 and an actual revenue amount of \$80.00:

2012-2013 BRP is $\$100.00 \times .95 = \95.00 (Adjusted BPR)

2012-2013 Total Projected Revenues = \$85.00

2012-2013 Eligible Recovery (Adjusted BPR-Projected Revenues) = \$10.00

2012-2013 Total Actual Revenues = \$80.00

Projected Revenue – Actual Revenue = \$5.00 (true-up amount)

2014-2015 Eligible Recovery adjusted by \$5.00

Thus, in this example, the carrier will need to increase its 2014-2015 Eligible Recovery amount by five dollars to reflect the difference between its actual revenues and projected revenues for the 2012-2013 tariff period.

III. DISCUSSION

7. As noted above, the 2014 annual tariff filing was the first time that Eligible Recovery was adjusted to incorporate a true-up of projected demand used in calculating Eligible Recovery for an earlier tariff period. The true-up process is designed to provide certainty to rate-of-return carriers by accounting for any difference between projected and actual switched access revenues, reciprocal compensation revenues, or ARC revenues due to demand variations. As the above examples and the illustration in the USF/ICC Transformation Order (which similarly shows operation of the true-up process when a carrier both overestimated and underestimated its projected revenues for the first year of the ICC reforms adopted by the Commission) demonstrate, a carrier's Eligible Recovery was to be adjusted either upward or downward based on any such differences. As the illustration in the USF/ICC Transformation Order reflects, the Commission expected that the amount of any adjustment could be completely offset through adjustments to the amount of Eligible Recovery for which ARC rates could be assessed and Connect

America Fund ICC support could be received.

8. In conjunction with the 2014 annual tariff filing process, NECA informally sought clarification concerning a limited number of cases in which the true-up process did not work as outlined above and for which the rules do not provide an unambiguous resolution. In the Order, we clarify how rate-of-return carriers and USAC should address the 2014-15 fact scenarios described below, consistent with the policy goals of the USF/ICC Transformation Order, and revise the Commission's rules, as set forth in the Appendix, to provide clarity for future tariff periods.

9. The first set of facts identified by NECA involves several carriers whose 2012-13 tariff period projected demand was underestimated compared to their ultimate actual demand. Each carrier therefore received too much Eligible Recovery in 2012-13, and, under the rules, their 2014-15 Eligible Recovery should be reduced by the amount of revenues associated with the demand difference. The carriers' Eligible Recovery for 2014-15 before reflecting the true-up adjustment, however, was not large enough to offset completely the true-up reduction from the 2012-13 tariff period. Thus, the excess Eligible Recovery carriers received during the 2012-13 tariff period has not been fully offset, and the carriers would be left with duplicative recovery in contravention of § 51.917(d)(1)(vii) of the rules absent clarification to specify the procedures to be followed under these circumstances. We accordingly clarify that carriers that are in this situation with respect to their 2014-15 Eligible Recovery calculation must refund to USAC the amount of the excess recovery that was not offset within thirty (30) days of the effective date of the Order. Consistent with the rules we adopt, as set forth in the Appendix, in the future a carrier in this situation must refund excess amounts to USAC by August 1 following the date of the annual access tariff filing.

10. The second set of facts that NECA sought clarification on involves several carriers who overestimated their 2012-13 tariff period projected demand compared to the resulting actual demand. Thus, to the extent carriers would have been entitled to Eligible Recovery for tariff period 2012-13 if they had accurately projected their demand, these carriers received too little Eligible Recovery in tariff period 2012-13. The affected carriers also have negative Eligible Recovery in the 2014-15 tariff period before

adjusting for any true-ups. Absent a clarification of our rules, these carriers would not receive the same level of revenues they would have been entitled to if they had projected their demand accurately in the 2012-13 tariff period. This occurs because the positive amount of the 2012-13 under-recovery would be reduced by the negative 2014-15 Eligible Recovery amount before further Eligible Recovery would be possible in tariff period 2014-15. This would deprive such carriers of the cash flow certainty the Commission sought to provide carriers through the recovery mechanism. As explained above, carriers that have negative Eligible Recovery were allowed to retain any revenues received through intercarrier revenue payments, consistent with the transition from strict rate-of-return regulation to incentive regulation. We accordingly clarify that those carriers that were in this situation with respect to their tariff period 2014-15 Eligible Recovery calculation may seek recovery of 2012-13 true-up under-recovery from USAC and are not required to offset the 2012-13 amounts they could have received in Eligible Recovery in the 2012-13 tariff period if they had projected demand correctly against their 2014-15 negative Eligible Recovery. The carrier's Eligible Recovery from USAC shall be equal to the amount of the 2012-13 true-up that a carrier could have recovered through Eligible Recovery in the 2012-13 tariff period if it had accurately projected demand and which amount a carrier was unable to recover as Eligible Recovery in tariff period 2014-15. Consistent with the rules we adopt in the Appendix, in the future a carrier in this situation must treat the amount eligible for true-up as its Eligible Recovery for the true-up tariff period and flow that amount through the normal procedures associated with the recovery mechanism. This is consistent with the priorities established for recovery of Eligible Recovery in the USF/ICC Transformation Order.

11. Finally, we clarify how ARC rates are to be handled in making Eligible Recovery calculations in light of mid-year revisions that some carriers have made to their ARC rates after discovering errors in the rates that were charged. The Commission's rules do not address applicable procedures for addressing such rate changes. If a carrier assessed an ARC rate that was too high for part of a tariff period, it must use this higher rate and the associated demand for that time period in calculating future true-ups for that tariff period. Failure to account for the higher ARC rates for the period in

question would constitute impermissible duplicative recovery because, without this treatment, the carrier would have received the ARC revenues without having to offset Eligible Recovery to reflect their receipt. We also take this opportunity to remind carriers that if they charge ARCs that are below the maximum rate that could have been charged, whether for the whole year or for part of a year, they are required to impute the maximum rate that they could have assessed for purposes of determining the carrier's Eligible Recovery. These clarifications help to ensure that the recovery mechanism adopted for rate-of-return carriers in the USF/ICC Transformation Order works as intended.

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act

12. This document does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.

B. Final Regulatory Flexibility Act Certification

13. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

14. We hereby certify that the rule revisions adopted in the Order will not have a significant economic impact on a substantial number of small entities. The Order amends rules adopted in the USF/ICC Transformation Order by correcting conflicts between the new or revised rules and existing rules, as well as addressing omissions or oversights. These revisions do not create any burdens, benefits,

or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to the USF/ICC Transformation Order. The Commission will send a copy of the Order, including a copy of this final certification, to the Chief Counsel for Advocacy of the SBA. In addition, the Order (or a summary thereof) and certification will be published in the Federal Register.

C. Congressional Review Act

15. The Commission will send a copy of the Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

V. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, that pursuant to the authority contained in sections 1, 2, 4(i), 201-203, 220, 251, 252, 254, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201-203, 220, 251, 252, 254, 303(r) and 403, and pursuant to §§ 0.91, 0.201(d), 0.291, 1.3, and 1.427 of the Commission's rules, 47 CFR 0.91, 0.201(d), 0.291, 1.3 and 1.427, and pursuant to the delegation of authority in paragraph 1404 of 26 FCC Rcd 17663 (2011), the Order and the rules revising part 51 of the Commission's rules are ADOPTED, effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

17. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

18. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR part 51

Communications common carriers, Telecommunications.

FEDERAL COMMUNICATIONS COMMISSION.

Deena M. Shetler,
Associate Chief,
Wireline Competition Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 C.F.R. part 51 as follows:

PART 51—INTERCONNECTION

1. The authority citation for part 51 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 706 of the Telecommunication Act of 1996, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 1302, 47 U.S.C. 157 note, unless otherwise noted.

Subpart J—Transitional Access Service Pricing

2. Section 51.917 is amended by adding paragraphs (d)(1)(viii)(A) and (B) to read as follows:

§ 51.917 Revenue recovery for rate-of-return carriers.

* * * * *

(d) * * *

(1) * * *

(viii) * * *

(A) If a Rate-of-Return Carrier in any tariff period underestimates its projected demand for services covered by § 51.917(b)(6) or 51.915(b)(13), and thus has too much Eligible Recovery in that tariff period, it shall refund the amount of any such True-up Revenues or True-up Revenues for Access Recovery Charge that are not offset by the Rate-of-Return Carrier's Eligible Recovery (calculated before including the true-up amounts in the Eligible Recovery calculation) in the true-up tariff period to the Administrator by August 1 following the date of the Rate-of-Return Carrier's annual access tariff filing.

(B) If a Rate-of-Return Carrier in any tariff period receives too little Eligible Recovery because it overestimates its projected demand for services covered by § 51.917(b)(6) or 51.915(b)(13), which True-up Revenues and True-up Revenues for Access Recovery Charge it cannot recover in the true-up tariff period because the Rate-of-Return Carrier has a negative Eligible Recovery in the true-up tariff period

(before calculating the true-up amount in the Eligible Recovery calculation), the Rate-of-Return Carrier shall treat the unrecoverable true-up amount as its Eligible Recovery for the true-up tariff period.

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